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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSEPH S. GONZALEZ et al.,

Defendants and Appellants.

B207128

(Los Angeles County
Super. Ct. No. BA314433)

THE COURT:*

Appellants Joseph S. Gonzalez (Gonzalez) and Frank A. Diaz (Diaz) appeal from the judgment entered following a joint trial that resulted in Diaz's conviction of one count of robbery (Pen. Code, § 211)¹ and the true finding that Diaz personally used a handgun in the commission of the crime. (§ 12022.53, subd. (a).) The trial court found true that Diaz had suffered two prior prison terms (§ 667.5, subd. (b).) Gonzalez was convicted of

* DOI TODD, Acting P. J., ASHMANN-GERST, J., CHAVEZ, J.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

counts 1, 3, 4, and 6 of robbery (§ 211) and the jury found true the allegations that Gonzalez personally used a handgun in the commission of those offenses (§ 12022.53, subd. (b).) The trial court found true in counts 7 and 8 that Gonzalez was in possession of a firearm with a prior (§§ 12021.1; 12021(a)(1)) after the parties stipulated that Gonzalez suffered a prior conviction of a felony offense as alleged in counts 7 and 8.

Diaz's conviction and Gonzalez's conviction of count 1, arise out of the following facts: On December 20, 2006, Diaz, Gonzalez, and another man were arrested for committing a robbery at a Jack-in-the-Box. That evening, two men wearing hooded sweatshirts and bandanas held up a Jack-in-the-Box, brandishing firearms. Several witnesses, including the restaurant manager, called 911. Officers responding to the call were directed to a speeding truck, which went through a chain link fence, flipped down an embankment, and landed on the driver's side. Diaz was semiconscious in the car, wearing a black hooded sweatshirt. In his sweatshirt was a Jack-in-the-Box paper bag with \$286. Gonzalez attempted to flee and was apprehended, wearing a black sweatshirt and blue bandanna. He had \$269 in his pocket. An automatic gun with live rounds was found in the car.

Gonzalez's conviction of count 3 and count 4 arises out of the following: On November 27, 2006, Gonzalez and another man committed a robbery at a Jack-in-the-Box restaurant in Hacienda Heights. Gonzalez was identified by a restaurant worker as the robber who approached him at the register with a gun and took money.

Gonzalez's conviction of count 6 arises out of the following: On November 29, 2006, Gonzalez and another man committed a robbery at a Burger King, wearing hooded sweatshirts. Gonzalez was identified by an employee as one of the robbers who held a gun to him and made him give him money from the register.

Diaz was sentenced to the upper term of five years for the robbery (§ 211), plus 10 years for the personal firearm use (§ 12022.53, subd. (b)) and one year for each of the two prior prison terms (§ 667.5, subd. (b)) for a total of 17 years in state prison.

The trial court sentenced Gonzalez to 42 years and four months in state prison as follows: on count 1, to the upper term of five years doubled based on the strike prior,

with a consecutive 10 years for the gun-use enhancement and five years for the serious prior felony offense for a total term of 25 years;² on count 3, the court selected one-third the midterm of one year, doubled based on the strike prior, and one-third of the 10 years for the gun use which was three years and four months for a total prison term of five years and four months; on count 4, the court selected one-third the midterm of one year, doubled based on the strike prior, and one-third of the 10 years for the gun use which was three years and four months for a total prison term of five years and four months; on count 6, to the midterm of one year, doubled based on the strike prior, with an additional three years and four months for the gun-use enhancement for a total prison term of five years and four months; on count 7, the court selected one-third the midterm of eight months, doubled based on the strike prior, for a prison term of one year and four months. These sentences were consecutive to count 1. On count 8, the court selected the midterm of two years, doubled based on the strike prior, for a total term of four years, which was stayed, pursuant to section 654.

We appointed counsel to represent Gonzalez and Diaz on this appeal. After examination of the record, counsel filed an “Opening Brief” in which no issues were raised.

On December 22, 2008, we advised Diaz that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

On September 15, 2008, we advised Gonzalez that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. No response has been received to date.

² The trial court imposed a one-year term for each of the two prison priors and ordered the two years imposed stayed.

We have examined the entire record and are satisfied that appellants' attorneys have fully complied with their responsibilities and that no arguable issues exist. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

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